

# EXHIBIT 3

Ridout, C. Benny

December 5, 2008

Raleigh, NC

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

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In re: PHARMACEUTICAL INDUSTRY ) MDL No. 1456  
AVERAGE WHOLESALE PRICE ) Master File No.  
LITIGATION ) 01-CV-12257-PBS

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THIS DOCUMENT RELATES TO: ) Judge Patti B.  
United States of America ex ) Saris  
rel. Ven-A-Care of the Florida )  
Keys, Inc., et al. v. Dey, )  
Inc., et al., Civil Action No. )  
05-11084-PBS )

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Video Deposition of C. BENNY RIDOUT,  
taken by the Defendants, at the Hilton North  
Raleigh, 3415 Wake Forest Road, Boardroom, Raleigh,  
North Carolina, on the 5th day of December, 2008 at  
9:10 a.m., before Marisa Munoz-Vourakis, Registered  
Merit Reporter, Certified Realtime Reporter and  
Notary Public.

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<p>1 know, you had everybody call in on you and you</p> <p>2 look at a drug price and everything.</p> <p>3 Q. That was over the course of I guess 29</p> <p>4 years that you worked with North Carolina</p> <p>5 Medicaid, right?</p> <p>6 A. Right.</p> <p>7 Q. And then eight more years since then in</p> <p>8 which you've acted as a private consultant?</p> <p>9 A. I don't do much in keeping up with</p> <p>10 pricing now, you know, what the drug prices are,</p> <p>11 because I don't see them like I did then. I'm</p> <p>12 not responsible making changes on them like I was</p> <p>13 then and keeping them updated. I was responsible</p> <p>14 for keeping up with them and updating them in the</p> <p>15 system at that time.</p> <p>16 Q. In the 29 years when you were with</p> <p>17 North Carolina Medicaid and you were looking and</p> <p>18 learning about drug pricing, would you say that</p> <p>19 you had experience with how the actual market,</p> <p>20 what pharmacists were actually paying for the</p> <p>21 drugs at that time?</p> <p>22 MS. YAVELBERG: Objection, form.</p>	<p>1 well, this is unusual. And so I began to get an</p> <p>2 education at that time.</p> <p>3 You see, no pharmacists would come and</p> <p>4 tell me hey, I'm making this amount of money, and</p> <p>5 this is what I'm paying, this is what you are</p> <p>6 paying. We had no way of knowing.</p> <p>7 Q. When did you get these updates from the</p> <p>8 generic manufacturers that you were referring to?</p> <p>9 A. They were wholesalers, mostly out of</p> <p>10 Florida, wholesalers that were trying, in other</p> <p>11 words, they had me listed as a pharmacy, I guess</p> <p>12 as a position, or they wanted to include me on</p> <p>13 the mailing list because they felt like I wanted</p> <p>14 to know the price of drugs or something.</p> <p>15 Q. When did you receive these mailings</p> <p>16 from wholesalers showing the discrepancies</p> <p>17 between --</p> <p>18 A. And some were drug manufacturers.</p> <p>19 Q. And manufacturers. The manufacturers</p> <p>20 and the wholesalers sent you these mailings. Do</p> <p>21 you recall when you received them?</p> <p>22 A. All through my career.</p>
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<p>1 A. I did not know what pharmacists</p> <p>2 actually paid for drugs, and with talking with my</p> <p>3 providers at pharmacies that participated in the</p> <p>4 Medicaid program, it was portrayed to me that</p> <p>5 every pharmacist had a different price. It</p> <p>6 depends on whether it's a chain, independent,</p> <p>7 whether it was rural, whether it was in the city,</p> <p>8 and everybody had a different price.</p> <p>9 And I will say that one of the things</p> <p>10 it taught me about pricing of drugs was the, some</p> <p>11 of the generic distributors, they would send me a</p> <p>12 price list of drugs. This is when I really got</p> <p>13 to know there was a discrepancy in pricing among</p> <p>14 generics is when they would mail me a pricing</p> <p>15 list. Why, I don't know, but they sent it to me,</p> <p>16 and it would have on that list the AWP price,</p> <p>17 then the direct price where you can buy direct</p> <p>18 from the manufacturer, and then it would have the</p> <p>19 selling price, and that really is what opened my</p> <p>20 eyes to drug pricing. And I saw the</p> <p>21 discrepancies in what they were selling direct</p> <p>22 for and what they had as AWP, and then I said</p>	<p>1 Q. So the entire 29 years?</p> <p>2 A. Well, no, originally I didn't get them,</p> <p>3 I guess before '92, probably in the '80s,</p> <p>4 probably the '80s I started receiving them.</p> <p>5 Q. What did these mailings show you about</p> <p>6 the difference between average wholesale price,</p> <p>7 direct price and the selling price for these</p> <p>8 generic drugs?</p> <p>9 A. What was really amazing to me is what</p> <p>10 they would show is maybe the AWP would be let's</p> <p>11 say \$100. The actual selling price may be \$30.</p> <p>12 That's when I really, really -- and all the</p> <p>13 pharmacists start thinking about gosh, if I'm</p> <p>14 paying for this drug it had the AWP there and</p> <p>15 that's what I'm basing my price on, and I got</p> <p>16 \$100 in the computer and they are selling it over</p> <p>17 here, you know, for this price, there's a big</p> <p>18 range in there, and we started looking at that</p> <p>19 range.</p> <p>20 Q. The selling prices that you would see</p> <p>21 on these fliers that were dramatically lower than</p> <p>22 the AWP or the direct price, do you recall were</p>

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<p style="text-align: right;">Page 50</p> <p>1 average wholesale price, but that's not what he 2 paid for it, and I have no idea what he paid for 3 it. 4 Q. Oh, I'm talking just about what you 5 observed from the fliers that you received that 6 would have an average wholesale price listed, and 7 that would list what the actual or what the 8 offered price was from that wholesaler, the 9 difference between those two numbers, do you 10 understand? 11 A. The brands always had less markup on 12 them than the generics. 13 Q. As to the generics, you indicated to me 14 that how much of a discount was offered by these 15 wholesalers, and let me back up one more. 16 When I'm referring to a discount, I'm 17 referring here to the difference between the 18 average wholesale price and the price the 19 wholesaler was offering the recipient to sell the 20 drugs. Do you understand that? 21 A. And I am assuming you are talking about 22 there's two different prices, whether you bought</p>	<p style="text-align: right;">Page 52</p> <p>1 price lists looked like? 2 A. It was a legal size of paper with just 3 columns on it with drugs, then it had columns of 4 AWP, direct cost, wholesaler cost and the 5 different prices in the columns for the drugs and 6 different strengths. Sometimes they vary by 7 strength. I mean, one drug may be a 10 percent 8 spread on 50 milligrams and on 100 milligrams it 9 may be 75 -- 10 THE VIDEOGRAPHER: Excuse me, we are 11 having the issue again. 12 MR. COOK: Let's go off the record and 13 fix the video. 14 (Off the record at 10:02 a.m.) 15 THE VIDEOGRAPHER: The time is 10:05 16 a.m., we are going on the record. 17 BY MR. COOK: 18 Q. Mr. Ridout, when we went off the 19 record, I think you were describing for us what 20 the mailings that you received from wholesalers 21 looked like? 22 A. Well, I wouldn't say it's wholesalers</p>
<p style="text-align: right;">Page 51</p> <p>1 it direct or whether you bought it through the 2 wholesaler. 3 Q. And in your experience, the price from 4 the wholesaler was lower or higher than buying it 5 direct? 6 MS. YAVELBERG: Objection, form. 7 A. Buying direct was a lower price than 8 buying through the wholesaler. There was a 9 bigger spread. 10 Q. And those would be shown on the fliers 11 you would see? 12 MS. YAVELBERG: Objection, form. I 13 don't think he said they were fliers. I think he 14 said he got price lists from the wholesalers. He 15 got fliers from the drug company. 16 MR. COOK: I can clarify that. 17 Q. What's the best way for me to refer to 18 the pieces of paper that were mailed to you by 19 the wholesalers? 20 A. I would call them price lists. They 21 would send me price lists. 22 Q. Could you describe to me what these</p>	<p style="text-align: right;">Page 53</p> <p>1 locally. When you say wholesalers, it didn't 2 come from every wholesaler. It was just some of 3 them, I guess national wholesalers, trying to get 4 the business. And some of the drug 5 manufacturers, a lot from drug manufacturers, 6 generic drug manufacturers. 7 But they were the legal size paper with 8 the columns on it, with the list of drugs on the 9 left-hand side and different strengths. Then it 10 would have a column in there about average 11 wholesale price and then a direct price. And 12 then the third column it had a price on there, 13 let's see, direct, AWP and I guess the regular 14 wholesale cost, if you bought it through the 15 wholesaler, which wasn't really average sometimes 16 AWP. 17 Q. I'm sorry, which was? 18 A. Which wasn't always AWP. 19 Q. And that was the price that when you 20 gave the example of showing \$100 for AWP and \$30 21 for the actual cost, that \$30 would be in that 22 last column, right?</p>

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<p style="text-align: right;">Page 54</p> <p>1 A. Yeah, it was always a difference in 2 what people would buy. 3 The reason they send this list out was 4 to get people to buy them. 5 Really the difference, when you look at 6 those two sheets, is what was the AWP and what 7 can I buy direct for? And you can always buy 8 direct a lot cheaper than you could through the 9 wholesaler. I wouldn't say always, but a 10 majority of the time. 11 Q. And in your experience, if a drug had 12 more competition, do you see greater differences 13 between the AWP and what you can buy the drug 14 for? 15 MS. YAVELBERG: Objection to form. 16 MS. HAYES: Objection to form. 17 A. You know, once again, like I said, I 18 made that statement about competition or market 19 share, I think I used, if it was, I guess, market 20 share was up, down in that particular one or like 21 it was competition, the spread wouldn't be as 22 much, it would be closer to the AWP rather than</p>	<p style="text-align: right;">Page 56</p> <p>1 out to us saying we are dropping out of this, you 2 know, you would have to know that or pick it up 3 somewhere. You just don't keep it up. There's 4 hundreds of thousands of drugs out there, NDCs. 5 Q. Given your experience, what would your 6 expectation be about what would happen to the 7 actual selling price for that drug when the 8 competition but one or two left the marketplace? 9 MS. YAVELBERG: Objection to form. 10 MS. HAYES: Objection to form. 11 A. I can tell you when there was a 12 shortage of a certain drug, some manufacturers 13 would quit backing it, that the competition was 14 less, that the price spread would be bigger. 15 Q. Do you recall which drug it was 16 specifically that you recall there being 17 shortages of? 18 A. I mean, you know, some of them like 19 heparin, I recall one time there was a problem 20 getting that product. Albuterol fluctuated all 21 over the place, had a spread in it. And it was 22 others, I just can't recall them. I might say</p>
<p style="text-align: right;">Page 55</p> <p>1 such a widespread. 2 The ones that maybe they got out and 3 there's only two companies that had that product 4 on the market instead of four or five, the spread 5 would be greater, and if you remember when I 6 authorized generic or either the generics the 7 first company bring the drug to the market, they 8 get exclusivity for six months to where they 9 price it, nobody else can copy that, generic 10 companies. And usually that first six months the 11 generic price is very close to the brand name 12 price. Then after that six months is over, other 13 drug companies can enter the market for that 14 product, and that's when you see the prices start 15 going down, when the competition comes in. 16 Q. Did you ever see a situation in which, 17 for whatever reason, competition left the 18 marketplace and left only one or two 19 manufacturers in it? 20 MS. YAVELBERG: Objection, form. 21 A. I can't say that I kept up with that. 22 I'm sure it happened. But there was nothing sent</p>	<p style="text-align: right;">Page 57</p> <p>1 one that wasn't, I mean, I got some in mind, but 2 I'm not sure, because we are talking about a 3 while ago. 4 But any time you could have a problem, 5 a manufacture can have a manufacturing problem, 6 you have to pull that product off the market. 7 FDA may suspend it, and when that happened, it 8 depends on how long it would take to get it back 9 on the market, and if there wasn't competition, 10 you know, the prices would be different. 11 Q. And in your experience, would the AWP 12 remain the same and then the far right column, 13 the actual selling price would go up and down? 14 MS. YAVELBERG: Objection, form. 15 A. I'm going to have to say that I did not 16 keep up with AWP's on a drug. I did say -- like I 17 said, you just don't have time to do that. 18 It is my understanding that the AWP 19 would change based on the competition and the 20 people in the marketplace. But as for me to say, 21 you know, now that's gone, I'm going to track 22 everybody's AWP, I didn't have time to do that.</p>

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<p>1 the gap on those. Well, they went to ASP for</p> <p>2 Medicare drugs in physician's office to get rid</p> <p>3 of that type thing, average selling prices, they</p> <p>4 changed the methodology of pricing because of</p> <p>5 that.</p> <p>6 Q. You mentioned that it was common</p> <p>7 knowledge that Vancomycin had a spread, do I have</p> <p>8 that correct?</p> <p>9 MS. HAYES: Objection to form.</p> <p>10 A. Yes.</p> <p>11 Q. When was it common knowledge that</p> <p>12 Vancomycin had a spread?</p> <p>13 A. I don't remember the year, just like it</p> <p>14 was this, but I just remember that drug was one</p> <p>15 of the antibiotics.</p> <p>16 Q. Do you recall whether it was similarly</p> <p>17 common knowledge that infusion products had</p> <p>18 spreads?</p> <p>19 MS. YAVELBERG: Objection, form.</p> <p>20 MS. HAYES: Objection, form.</p> <p>21 A. We had no idea what the specialty</p> <p>22 pharmacists were paying for that drug, what kind</p>	<p>1 manufacturers to be able to do it or something.</p> <p>2 That was just my own personal feeling. How did</p> <p>3 they do it?</p> <p>4 Q. And the significance of their ability</p> <p>5 to get special deals would be that they could</p> <p>6 make profit on the drug ingredient cost, right?</p> <p>7 MS. YAVELBERG: Objection to form.</p> <p>8 MS. HAYES: Objection to form.</p> <p>9 A. I have no idea what profit they made or</p> <p>10 what they were doing. I just know that nobody</p> <p>11 does anything for a loss. You wouldn't stay in</p> <p>12 business.</p> <p>13 Q. Let's take a couple of steps back.</p> <p>14 Could you describe for the jury when</p> <p>15 you talk about specialty pharmacies, what are you</p> <p>16 referring to?</p> <p>17 A. Well, there's pharmaceutical companies,</p> <p>18 pharmaceutical providers, excuse me, they will</p> <p>19 take drugs that will require a lot of attention</p> <p>20 and effort that have to be mixed and have to be</p> <p>21 stored and have to be administered by a highly-</p> <p>22 trained person, such as the chemotherapy drugs,</p>
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<p>1 of deals they struck with the manufacturers, but</p> <p>2 it was of their opinion of us that there was some</p> <p>3 kind of spread in there because of what they were</p> <p>4 able to do that a regular pharmacist couldn't do</p> <p>5 at AWP. You see, we still paid at AWP.</p> <p>6 Q. What do you mean what they could do</p> <p>7 that other pharmacists couldn't?</p> <p>8 A. Infusion drugs is a whole lot more than</p> <p>9 just putting a pill in a bottle. You got to</p> <p>10 prepare. In fact, the pharmacists wanted a</p> <p>11 special fee to do this under-the-hood</p> <p>12 preparation, you know, also injection takes</p> <p>13 longer, you got to have syringe and all the stuff</p> <p>14 to do that. Of course they were shipping that on</p> <p>15 top of the cost to ship the product.</p> <p>16 So if you add up all that extra cost in</p> <p>17 a regular pharmacy or regular pills, you know,</p> <p>18 you think well, how in the world can they afford</p> <p>19 to do this and accept that same price?</p> <p>20 Q. What was your conclusion?</p> <p>21 A. That somehow they were getting some</p> <p>22 kind of special deal back or discount from the</p>	<p>1 some of the asthmatic drugs, some of the</p> <p>2 specialty diseases. And they will go in and say,</p> <p>3 you know, here's a niche, we will carve this out</p> <p>4 and we will provide this to Medicaid as a service</p> <p>5 because the local pharmacists can't do that. He</p> <p>6 doesn't go into a person's home. He doesn't send</p> <p>7 a nurse out. They have a nurse on the team that</p> <p>8 will go in and administer that drug for that</p> <p>9 patient.</p> <p>10 So it's more involved than just</p> <p>11 dispensing a drug like a regular pharmacist does.</p> <p>12 So they are called specialty pharmacists.</p> <p>13 Q. So the jury understands, when you refer</p> <p>14 to these specialty drugs, are they in pill form?</p> <p>15 A. No, most of the time they are.</p> <p>16 Q. What form are they taken?</p> <p>17 A. They would either be injections or</p> <p>18 infusions, inhalation drugs.</p> <p>19 Q. Could you explain to the jury what</p> <p>20 infusion and inhalation are?</p> <p>21 A. Inhalation would be a drug that is</p> <p>22 administered through breathing apparatus, like an</p>

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<p style="text-align: right;">Page 70</p> <p>1 years, but we did a dispensing fee survey to  2 determine what it cost for the prescription. And  3 we did something in North Carolina that everybody  4 needs to know and understand, that our fee was a  5 little higher than some state fees, dispensing  6 fees, but I started this in North Carolina, I  7 started quite a few things in Medicaid. It was  8 adopted in other states. But we did not pay for  9 refills of the same drug within the same month  10 that all other states did. I found out that was  11 abuse being done by them, especially nursing  12 homes. They would send over prescription every  13 week and get another fee, and some of the  14 pharmacists on maintenance medication, they would  15 be taking a whole month, give them maybe a two-  16 week supply, get them to come back and they would  17 get two fees.</p> <p>18 So I went in and said okay, you all,  19 I'm going to give you one fee per drug per month,  20 and that's all you are going to get. And in  21 doing that, I went into my system and found out  22 how many refills I was paying for at that time</p>	<p style="text-align: right;">Page 72</p> <p>1 any sort of additional payment for the additional  2 services that you described?</p> <p>3 MS. YAVELBERG: Objection, form.</p> <p>4 A. I'm not aware what they received, but  5 some of them were eligible for some reimbursement  6 through the home health program, the third-party  7 program we had, durable medical equipment, some  8 of the pumps they had to supply and some of the  9 equipment they had to supply, they could bill  10 that through the durable medical equipment  11 program, but it didn't come through the  12 outpatient drug program. We paid for drugs.</p> <p>13 Q. You mentioned earlier your belief that  14 given the amount of services that some of these  15 specialty pharmacies were providing, that you  16 were led to believe that they were buying drugs  17 at deeper discounts. Do you recall that  18 testimony?</p> <p>19 MS. YAVELBERG: Objection, form.</p> <p>20 MS. HAYES: Objection, form.</p> <p>21 MS. YAVELBERG: I don't believe that  22 was his testimony.</p>
<p style="text-align: right;">Page 71</p> <p>1 and how much I would be taking back from the  2 pharmacists.</p> <p>3 And so I tried to split part of that  4 with them, to be fair with them, and I raised the  5 fee, I think at that time 25 cents.</p> <p>6 So that was based on some of the fee  7 while ours was up, and we didn't pay for those  8 refills and we never did. Where other states  9 were paying a lot more for them in paying for  10 those. And then, of course, a lot of those  11 states adopted it after they found out.</p> <p>12 Q. But the dispensing fee throughout the  13 '90s was something less than \$6?</p> <p>14 A. Yes.</p> <p>15 Q. Did -- in home IV pharmacies, infusion  16 pharmacies, did they receive that same dispensing  17 fee as retail pharmacies did?</p> <p>18 A. Yes, anybody that participated in an  19 outpatient drug program got the same  20 reimbursement. We took AWP minus ten off of  21 them. They got the same fee.</p> <p>22 Q. Did these home IV pharmacies receive</p>	<p style="text-align: right;">Page 73</p> <p>1 A. I just said that I don't see how they  2 could do it for that. I have no idea what they  3 were buying it for, what was going on.</p> <p>4 Q. Leaving aside the specifics of what  5 they were paying for it, you had an  6 understanding, am I correct, that they were  7 making profit on the drug side?</p> <p>8 MS. YAVELBERG: Objection, form.</p> <p>9 A. I had to assume that if I was taking  10 ten percent off of that price, and they were  11 providing all this service, that somehow they had  12 to be getting some kind of help from somewhere.  13 I mean, I couldn't see how they can do it with me  14 taking ten percent off of the drug cost and then  15 them providing those extra services and billed  16 for that. That was my opinion.</p> <p>17 Q. Did you ever have any conversations  18 with anybody from IV pharmacies about that issue?</p> <p>19 A. I used to just try to discuss it with  20 them, but they didn't want to talk to me about  21 drug pricing. In fact, I went to meetings and  22 talked to my providers and told them you know</p>

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<p style="text-align: right;">Page 142</p> <p>1 dispensing fees accordingly, and the net result 2 may be zero." 3 Was it your experience in the '80s that 4 efforts to reduce estimated acquisition cost 5 would result in pressures to increase dispensing 6 fees? 7 MS. YAVELBERG: Objection, form. 8 MS. HAYES: Objection, form. 9 A. It was always the feeling, I think, of 10 the pharmacy directors, those states that had a 11 fee that was lower than what it cost to fill a 12 prescription, that if they took anything off one 13 side, they would have to put some on the other 14 side to help so the pharmacists could make it. 15 So if you got the actual acquisition 16 cost on one side, and your fee didn't cover his 17 cost to fill the prescription, you would have to 18 raise that fee. In fact, I made that known to 19 the OIG itself. 20 Q. When did you make that known to the 21 OIG? 22 A. One of these meetings. In fact, I even</p>	<p style="text-align: right;">Page 144</p> <p>1 But I would just caution them you calculated the 2 savings, but you would have to take into account 3 some of it would be to go to the dispensing fee 4 side. 5 Q. When you say that the dispensing fee 6 would have to go up less than the prices would go 7 down, are you referring there to retail pharmacy, 8 or are you including that also the home IV and 9 infusion pharmacies? 10 MS. YAVELBERG: Objection to form. 11 A. To all pharmacies, the fee that we paid 12 to the people that got the fee, the dispensing 13 fee. If we go back statistically show the 39 14 percent, so if we lower the ingredient cost 39 15 percent, we are not going to increase the 16 pharmacy's fee 39 percent, is what I was 17 basically saying. 18 Q. If you were to increase the pharmacy 19 fee for home IV pharmacies and infusion 20 pharmacies to the point where it covered the 21 actual cost of the home infusion pharmacy, it 22 would have to be much greater than \$66?</p>
<p style="text-align: right;">Page 143</p> <p>1 probably told him that in that meeting in 2 Chicago. I can't be exact, but I told him, you 3 know, your savings are not going to be as great 4 as you think they are, because some of them are 5 going to have to go over on the dispensing fee 6 side, and that was common knowledge, because we 7 were paying such low fees. 8 Q. And was that something that was 9 generally discussed in pharmacy administrator 10 meetings that you attended over the years? 11 MS. YAVELBERG: Objection, form. 12 A. At the meetings that I was at, I guess 13 some of the other people heard that, knew that. 14 Q. But it wasn't a secret, was my 15 question, right? 16 MS. YAVELBERG: Objection, form. 17 A. No, I wouldn't say it was a secret. 18 Q. And then in the next sentence -- 19 A. But I guess I could clarify that by 20 saying what we were talking about putting on the 21 dispensing fee side was a whole lot less than 22 what we would be taking off on the left side.</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. YAVELBERG: Objection, form. 2 A. We didn't do that. We didn't pay them 3 any different fee than we did the regular. They 4 got the same fee. So there was no feelings that 5 we would change that. We weren't going to pay 6 them a higher fee. 7 Q. Well, I'll get to that in a minute. 8 A. We still don't pay a higher fee to 9 them. 10 Q. When you were with North Carolina 11 Medicaid, did you have an understanding of what 12 the cost was for home infusion pharmacies to 13 dispense their products? 14 MS. YAVELBERG: Objection, form. 15 A. No. 16 Q. I think you testified earlier, and 17 correct me if I'm wrong, that you understood that 18 that expense had to be greater than it was for 19 retail pharmacies, right? 20 A. Yeah, common sense would tell you it 21 cost more to do what they did than what the 22 retail pharmacists did.</p>

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